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IN THE

Supreme Court of the United States

CAROLINE WALLACE AND EMILY MAW,
Petitioners,

v.

PASCAL F. CALOGERO, JR., IN HIS OFFICIAL CAPACITY AS CHIEF JUSTICE OF THE LOUISIANA SUPREME COURT, ET AL.,
Respondents,

KAREN LECLERC, ET AL.,
Petitioners,

v.

DANIEL E. WEBB, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF OF TULANE UNIVERSITY SCHOOL OF LAW AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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IN THE

Supreme Court of the United States

05-1645

CAROLINE WALLACE AND EMILY MAW,
Petitioners,

v.

PASCAL F. CALOGERO, JR., IN HIS OFFICIAL CAPACITY AS CHIEF JUSTICE OF THE LOUISIANA SUPREME COURT, ET AL.,
Respondents,

06-11

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Petitioners,

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DANIEL E. WEBB, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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MOTION OF TULANE UNIVERSITY LAW SCHOOL FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF THE PETITIONERS

Pursuant to Supreme Court Rule 37.2(b), Tulane University Law School ("Tulane") respectfully moves this Court for leave to file the accompanying brief as an *amicus curiae* in support of the Petitions in Nos. 05-1645 and 06-11 (as consolidated by this Court).

A letter of consent to the filing of this brief has been received from Petitioners Wallace and Maw. Respondents, Pascal F. Calogero, Jr., in his official capacity as Chief Justice of the Louisiana Supreme Court, et al., have declined to consent, thereby requiring this motion.

Tulane's interest in this case stems from its more than 150 years of international legal training and focus on comparative law. In recognition of the trend towards globalization of the legal profession, Tulane fashioned a unique curriculum by incorporating both the common law and civil law traditions. Foreign students comprise a significant percentage of Tulane's student body, and these students contribute considerably to the academic environment. To promote its international mission, Tulane has built significant relationships with foreign legal institutions. As a result, Tulane has developed a worldwide reputation as an elite legal training ground, particularly in the field of international and comparative law.

The Fifth Circuit's ruling upholding the Louisiana Supreme Court's revised interpretation of Rule XVII Section 3(B) detrimentally impacts both the Tulane and the Louisiana legal community. *Compare In re Bourke*, 819 So.2d 1020, 1022 (La. 2002), *reh'g denied*, 820 So.2d 565 (2002) (reinterpreting the term "resident alien" in Section 3(B) as limited to aliens who have been granted permanent resident status in the United States and excluding those who are lawfully residing in the country under a temporary visa with a finite term) *with In re Appert*, 444 So.2d 1208 (La. 1984) (holding that all foreign nationals lawfully within the United States are considered "resident aliens") and *In re Respondek*, 442 So.2d 435 (La. 1983) (interpreting the term "resident alien" to mean an alien who is lawfully residing in the United States). Louisiana will suffer monetary loss and its citizens will be deprived of the specialized expertise that nonimmigrant alien lawyers offer. Indigent and underrepresented clients will be particularly harmed by Louisiana's alienage-based ban

because foreign lawyers, like the petitioners, often champion less remunitive or unpopular causes.

The Fifth Circuit's decision has slammed the door in the face of Louisiana's nonimmigrant law students legally admitted into the United States, forcing them to sit for the bar in states other than where they attended law school and established their U.S. residence. If this newly-minted discrimination against nonimmigrant aliens spreads to other states and professions, it will create a greater jurisdictional patchwork and handicap the ability of foreign students and lawyers to practice their specialized professions in the United States. This result would reduce the pool of qualified professionals in this country and heighten the potential for backlash from foreign institutions and governments to the detriment of the international legal community. All of these concerns hamper Tulane's ability to remain competitive in the local, national, and international legal marketplaces. Accordingly, Tulane University Law School respectfully requests leave to file the accompanying *amicus curiae* brief.

Respectfully submitted,

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LA. ADMIN. CODE tit. 46, pt. XL, § 113 9
LA. ADMIN. CODE tit. 46, pt. XLV, § 2907 9
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U.S. Const. art. VI ..... *passim*

OTHER AUTHORITIES

2006 Economic Report of the President 18, 19
ABA/BNA Lawyer's Manual on Professional Conduct, last updated June 28, 2006 8
Morgan Appel, et al., Association of American Colleges and Universities, *The Impact of Diversity on Students: A Preliminary View of the Research Literature* (1996) 12
Centennial World Congress on Comparative Law Papers, 75 Tul. L. Rev. 859-1245 (2001) 14

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David Clark, *The Oxford Handbook of Comparative Law* (David Clark et al., eds., Oxford University Press) (forthcoming Nov. 2006) 4

Susan Finch, *Judge Deals Setback to Foreign Lawyers: Ban from Louisiana Bar Exam is Upheld*, New Orleans Times Picayune (July 3, 2003) 16

Eric Freeman, *Barriers to Foreign Professionals Working in the United States*, Center for Economic and Policy Research, *available at* http://www.cepr.net/publications/professional_supplement.htm (last visited July 28, 2006) 6

Patricia Gurin, et al., *Diversity and Higher Education: Theory and Impact on Educational Outcomes*, 72(3) Harv. Educ. Rev. 330 (2002) 12

Joe Gyan, Jr., *Court Hears Challenge to Lawyers Ban*, Baton Rouge Advocate (October 6, 2004) ... 16

Louisiana State Bar Mission Statement, *available at* http://www.lsba.org/association/association.html (last visited July 27, 2006) 15

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Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 Fordham Int'l L.J. 1039 (2002) 11, 12

U.S. Citizenship and Immigration Services, Employment-based Permanent Residence, Employer Information Bulletin 14, March 16, 2005 19

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INTEREST OF *AMICUS CURIAE*[1]

Tulane University Law School ("Tulane") has educated lawyers for over 150 years. Guided by Louisiana's unique legal history and heritage, one of Tulane's principle missions is to provide a welcoming and rigorous academic environment for both U.S. and foreign students.

Tulane has diligently developed an extensive international and comparative law curriculum and actively recruits foreign students for admission to its J.D. and LL.M. programs. In recent years, the foreign students have comprised nearly ten percent of the student body and have contributed substantially to Tulane's academic environment. Tulane also has built significant relationships with legal institutions throughout the world. As a result of its hard work, some have ranked Tulane as the leading comparative law school in the country and it has earned a worldwide reputation for its international and comparative law programs.

Tulane is significantly harmed by the Fifth Circuit's interpretation and application of constitutional law with respect to upholding Louisiana State Bar Rule XVII Section 3(B) ("Section 3(B)"). The ruling detrimentally impacts Tulane's educational environment and, as a consequence, adversely affects the local and national legal communities. One petitioner, Emily Maw, received her J.D. from Tulane in 2003 and has been denied admission to the Louisiana State Bar, the state in which she has continuously resided since enrolling at Tulane.[2] The Fifth Circuit's decision hampers Tulane's abil-

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[1] Pursuant to SUP. CT. R. 37.6, counsel for *amicus curiae* authored this brief in its entirety. No person or entity other than *amicus curiae* made a monetary contribution to the preparation or submission of this brief.

[2] Petitioner, Emily Maw, is a member of the Mississippi Bar and resides in New Orleans, Louisiana. Maw is the Director of the Innocence Project–New Orleans. Unlike many other Louisiana Bar members, Maw promptly returned to her post after Hurricane Katrina to serve her indigent clients. Additionally, the U.S. government recently granted Maw a three-year visa extension.

ity to fulfill its international mission, to maintain its elite reputation for the study of international and comparative law, and to remain competitive in the legal education marketplace.

SUMMARY OF ARGUMENT

The Fifth Circuit erred in upholding the Louisiana Supreme Court's reinterpretation of Section 3(B) as constitutional under the Equal Protection Clause of the Fourteenth Amendment. In the face of *In re Griffiths*, 413 U.S. 717 (1973), Louisiana is the only state in the nation to deny lawfully admitted aliens admission to its bar. The practical result is that nonimmigrant aliens "lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such states as chose to offer hospitality." *Truax v. Raich*, 239 U.S. 33, 42 (1915). The restricted scope for those eligible for the Louisiana Bar under Section 3(B) violates the Fourteenth Amendment because "the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure." *Truax*, 239 U.S. at 41.

This Court recently recognized the benefits of classroom diversity as important and laudable. *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003). These benefits will be stifled by the Fifth Circuit's decision that prevents nonimmigrant aliens from sitting for the Louisiana Bar, thereby discouraging nonimmigrant aliens from attending law schools in Louisiana. Tulane and its students are, and will be, harmed as the distinct contributions of international students at the law school diminish. The Louisiana Bar will also suffer a shortage of attorneys with innate understanding of foreign legal systems and cultures. Lawyers frequently represent foreign countries and resident nationals in U.S. courts, and precluding nonimmigrant aliens' admission to the Louisiana Bar hampers the

ability of clients to receive the quality of representation they may require in an ever-globalizing economy.

The ruling does not comport with Louisiana's regulation of most other specialized professions. The risk of transient professionals leaving the jurisdiction is in no way particular to attorneys. If the ruling stands, Louisiana may choose to deny nonimmigrant aliens licenses in other professions. This would significantly impact all nonimmigrant aliens as well as educational programs at Tulane and other educational institutions. Moreover, other states could elect to follow Louisiana's departure from precedent.

The reinterpretation of Section 3(B) also violates the Supremacy Clause. The rule prohibiting nonimmigrant aliens from sitting for the Louisiana Bar directly contradicts the federal law authorizing such aliens to enter the United States to pursue a specialized profession upon obtaining the requisite licensing. Moreover, employers will be discouraged from sponsoring aliens for legal permanent residency as expressly provided by Congress in the Immigration and Nationality Act. Tulane's resulting inability to place well-qualified foreign students in employment limits its ability to attract them to the school, thereby severely tarnishing Tulane's international allure. The tremendous negative impact on Tulane, as well as on other institutions of higher education and the legal community, caused by the Fifth Circuit's misinterpretation of the Equal Protection and Supremacy Clauses merit grant of certiorari to decide the important issues presented in this case.

ARGUMENT

Petitioners present compelling legal reasons for granting certiorari in this case: The Fifth Circuit's ruling violates the Equal Protection Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, and directly contradicts federal law that preempts Louisiana State Bar Rule XVII Section 3(B) under

the Supremacy Clause, U.S. Const. art. VI. *Amicus curiae* will show how this unconstitutional discrimination against nonimmigrant aliens harms Tulane, its alumni, the Louisiana Bar, and Louisiana residents. If this ruling is allowed to stand and is extrapolated to other states and professions, the negative impact will be felt nationwide.

I. THE DECISION BELOW IMPEDES TULANE'S LONG-STANDING MISSION OF BEING A SCHOOL OF INTERNATIONAL STATURE.

Tulane has emphasized international and comparative law studies as part of its curriculum since the 1850's. As one of the first U.S. law schools to implement a dedicated international and comparative program, Tulane scholars literally wrote the first book on comparative law in the United States.[3] Because of its preeminence in this field, Tulane was selected as the host institution for the Centennial World Congress on Comparative Law in 2000, drawing distinguished jurists and legal scholars from around the world.[4] Tulane's comparative and international law program is one of the best and longest-standing in the country.[5]

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[3] *See* Gustavus Schmidt, *The Civil Law of Spain and Mexico* (New Orleans: printed for the author by T. Rhea) (1851) (Gustavus Schmidt was a founder and former Dean of Tulane University Law School).

[4] *See* Nick Marinello, *Comparative Law: Back to the Future*, Inside Tulane (November 15, 2000), *available at* http://www2.tulane.edu/EditorialNewsDetails.cfm?EditorialID=469 (last visited July 28, 2006).

[5] Ugo Mattei, *Some Realism about Comparativism: Comparative Law Teaching in the Hegemonic Jurisdiction*, 50 Am. J. Comp. L. 87, 95 (2002) (In the rankings, "[t]he gold medal is given to Tulane Law School."). *See also* David Clark, *The Oxford Handbook of Comparative Law* (David Clark et al., eds., Oxford University Press) (forthcoming Nov. 2006). In analyzing the development of comparative law in the United States, Mr. Clark devotes an entire section of Chapter 5 to Tulane Law School, the only law school meriting such consideration.

Due to Louisiana's unique civil law history and its locale, Tulane is distinctly situated to attract international students. As one of the only U.S. schools that provides extensive and in-depth instruction in both civil and common law, Tulane serves as a bridge between the two major legal systems of the Western world. International students choose Tulane because of its ability to teach both legal systems and provide a unique learning atmosphere. Tulane now finds itself in a jurisdiction that denies qualified nonimmigrant aliens the opportunity to practice law in the state of their choice, impeding Tulane's ability to attract foreign students who have always enriched the school.

Tulane attracts international students by providing a welcoming academic environment both inside and outside the classroom. Tulane offers a wealth of common law and civil law courses, including over eighty courses related to international issues; seminars, symposia, and lectures on all aspects of international and comparative law through the Eason-Weinmann Center for Comparative Law; nine summer school sessions abroad in six different countries; and student and faculty exchange programs with twelve international universities on four continents. Tulane's international and comparative law courses are taught by a well-published and internationally-recognized permanent and visiting faculty.[6] Tulane's student-edited publications include the *Tulane Journal of International & Comparative Law*, and *The Tulane Law Review*, the masthead for which has long read: "*Devoted to the Civil Law, Comparative Law & Admiralty Law.*"[7]

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[6] Tulane is one of the few universities in the world to have two faculty members elected to the Academy of Comparative Law at the Hague—Professors Thanassi Yiannopoulos and Vernon Palmer. Professor Palmer was recently knighted as a *Chevalier* in the French Legion of Honor.

[7] Additionally, the *Tulane Law Review*, founded in 1916 as the *Southern Law Quarterly*, became an official organ of the *Comparative Law Bureau Annual Bulletin of the American Bar Association* in 1929. Although the motto of *Tulane Law Review* has undergone minor changes

In addition, Tulane publishes *The Tulane European & Civil Law Forum*, a faculty-edited journal.

Tulane also promotes education of foreign lawyers in other ways. For example, Tulane sponsors a Ph.D. program in American Law for members of the law faculty at the Monterrey Institute of Technology in Monterrey, Mexico. Tulane also supports international students by offering significant scholarships and grants. The Louisiana legal community assists Tulane in welcoming and promoting the education of foreign students.[8] For instance, several New Orleans law firms hold receptions each year for Tulane's international LL.M. students in order to build relationships with these foreign lawyers.

The 2002 reinterpretation of Section 3(B) to prevent nonimmigrant aliens from obtaining state licensure significantly impedes Tulane's efforts to preserve a diverse international student body and maintain the law school's international prestige. The decision discourages prospective international applicants from attending Tulane, knowing that they will not be afforded the same professional opportunities offered in other jurisdictions.[9]

No other state in the country has a restriction to bar licensure, like the one created under Section 3(B), that discriminates against nonimmigrant aliens.[10] Some states have

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over the years, its founding motto was "Dedicated to Civil Law, Comparative Law and Codification."

[8] Ironically, even the Louisiana Supreme Court promotes its international heritage by advertising "its roots in the colonial governments established by France and Spain." *See* Louisiana Supreme Court History, *available at* http://www.lasc.org/about_the_court/history.asp (last visited July 27, 2006).

[9] Other U.S. jurisdictions allow all international students to be admitted to the State's Bar. *See, e.g.*, N.Y. CT. R. §§ 520.1-520.15 (the bar admission rules of New York do not impose a residency requirement).

[10] *See* Eric Freeman, *Barriers to Foreign Professionals Working in the United States*, Center for Economic and Policy Research, *available at* http://www.cepr.net/publications/professional_supplement.htm (last

addressed Louisiana's transiency concerns through bar admissions rules without violating the Equal Protection Clause, while still welcoming foreign lawyers. For example, South Dakota and Minnesota allow nonresidents to be admitted to the bar upon establishing an office in the state, or upon appointing an agent within the state to accept service.[11] This solution addresses transiency concerns while allowing the states to maintain the benefits of admitting immigrant lawyers to their respective bar.[12]

Interestingly, the Louisiana Bar continues to allow foreign-trained lawyers who have never attended law school in the United States to be admitted to the bar.[13] The ABA

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visited July 28, 2006). Contrary to Respondents' contention, neither New Hampshire nor Rhode Island prohibit the licensing of nonimmigrant aliens. *See* R.I. SUP. CT. R., art. II, R. 1(a) (an applicant must be "a citizen of the United States or legal resident"). *See* N.H. SUP.CT.R. 42(3)(a) ("any person domiciled in the United States . . . shall be eligible to apply for examination"); N.H. REV. STAT. 21:6-a ("Residence or residency shall mean a person's place of abode or domicile. The place of abode or domicile is that designated by a person as his principal place of physical presence for the indefinite future to the exclusion of all others.").

[11] Minn. Bar Admiss. R. 4; S.D. CODIFIED LAWS § 16-16-2.

[12] As Petitioners argue, the appropriate standard to apply to this analysis is strict scrutiny. Under strict scrutiny, Louisiana's concerns regarding transiency (if compelling) must be addressed in the least restrictive means possible. The statutes in South Dakota and Minnesota suggest at least one possibility of a "least restrictive means possible" approach to address the concerns of the Louisiana Bar Association. *See* Minn. Bar Admiss. R. 4; S.D. CODIFIED LAWS § 16-16-2.

[13] *See* La. Bar Admiss. R. XVII, § 6; *see also Jia v. Bd. of Bar Exam'rs*, 696 N.E.2d 131 (Mass. 1998) (In *Jia*, the court held that Jia could not be admitted to the Massachusetts Bar despite the fact that Jia's Chinese law degree combined with his M.C.L. and S.J.D. received from Tulane qualified him to sit for, and be admitted to, the state bars of Louisiana and New York.). Indeed, before the 2002 reinterpretation, other nonimmigrant aliens were admitted to the Louisiana Bar under the identically worded rule.

guidelines presume that foreigners who receive a J.D. from a U.S. law school will be eligible for bar admission.[14] Only Louisiana has deviated from the ABA's universal assumptions, generally adhered to by other U.S. states. Louisiana's reinterpretation of Section 3(B) results in nonimmigrant aliens who study law in the United States, at ABA approved institutions, being denied the opportunity to sit for the Louisiana Bar while others who never studied in a U.S. law school are eligible to practice law in the States. This result is not rational.

In an era when "[a]ny law dean worth his or her salt will tell alumni and students that it is important for their school to be 'international,'" many law schools are seeking to diversify their educational programs.[15] The decision is likely to discourage foreign students from seeking admission to any U.S. law school out of fear that bar admission rules may change in other states while the nonimmigrant student is attending school. That is, foreign applicants will find themselves in the same situation as the petitioners in this case.[16] Foreign students seeking an international legal education are now presented with a number of opportunities to study in countries like Australia, Asia, and Europe. Given the potentially hostile environment these students could face in the

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[14] The American Bar Association (ABA) Lawyer's Manual on Professional Conduct recognizes that foreign trained lawyers may seek admission to U.S. State Bars. The Manual states that foreign lawyers may be required to take the bar exam and/or attend law school in the United States in order to be admitted to the bar. *See* ABA/BNA Lawyer's Manual on Professional Conduct, last updated June 28, 2006.

[15] David E. Van Zandt, *Globalization Strategies for Legal Education,* 36 U. Toledo L. Rev. 213, 213 (2004).

[16] This fear is not unfounded. When Petitioners Maw and Wallace began law school, the Louisiana Bar admitted similarly-situated nonimmigrant aliens to the Bar. *Compare In re Bourke,* 819 So.2d 1020, 1022 (La. 2002), *reh'g denied,* 820 So.2d 565 (2002) *with In re Appert,* 444 So.2d 1208 (La. 1984) and *In re Respondek,* 442 So.2d 435 (La. 1983).

United States, they may opt not to seek admission to U.S. schools in light of opportunities available in other countries. This is a result that has far reaching consequences for both U.S. law schools and the practice of law in this country.

If this Court does not grant certiorari to clarify the issues presented, the rationale used to justify the discrimination against nonimmigrant aliens in bar licensure may be extended to other professions. Currently, most Louisiana professional licensing authorities do not prevent nonimmigrant aliens from obtaining professional licenses. For instance, non-citizen applicants for medical licenses are only required to present a valid visa entitling them to work and reside in the United States.[17] In fact, the Louisiana Board of Medical Examiners grants nonimmigrant aliens a temporary license to be used during the pendency of their nonimmigrant visa application.[18] Additionally, the State does not require engineers to meet residency requirements before obtaining state licensure.[19] Among the other professions in Louisiana that do not limit licensure based on alienage status are: horticulturists,[20] home inspectors,[21] occupational therapists[22] and radiologic technologists.[23]

All professions have some risk that individual professionals will skirt their duties and leave behind injured persons with no recourse. However, to date, despite the same risks

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[17] LA. ADMIN. CODE tit. 46, pt. XLV, § 311(A)(3).

[18] LA. ADMIN. CODE tit. 46, pt. XLV, § 401(A).

[19] LA. ADMIN. CODE tit. 46, pt. LXI, § 903; *see also Examining Bd. of Eng'rs, Architects and Surveyors v. Flores de Otero*, 426 U.S. 572 (1976) (holding that prohibition on aliens engaging in private practice of engineering deprived them of their constitutional rights).

[20] LA. ADMIN. CODE tit. 7, pt. XXIX, § 105.

[21] LA. ADMIN. CODE tit. 46, pt. XL, § 113.

[22] LA. ADMIN. CODE tit. 46, pt. XLV, § 1907.

[23] LA. ADMIN. CODE tit. 46, pt. XLV, § 2907.

due to transient professionals as the practice of law, most other professions in the state of Louisiana welcome non-immigrant aliens. It strains reason to argue that a lawyer leaving the jurisdiction is different from a doctor or home inspector in terms of potential damage they may cause, or the disaster that goes unfixed as a result of a client having no recourse. Because there is no known record or evidence of such transiency problems in any of these other professions in Louisiana (or, indeed, in the legal profession for that matter), the justification for the newly-adopted interpretation of Section 3(B) is ephemeral.[24]

If this anti-alien interpretation of Section 3(B) is permitted to stand, Louisiana or any other state could assert the same unsupported transiency rationale to exclude all nonpermanent resident aliens from any and all licensed professions despite their lawful presence and right to work in the United States. In effect, Louisiana would be able to control how H1-B visas are granted to nonimmigrant aliens seeking employment in Louisiana. The negative implications are powerful for all nonimmigrant aliens, as well as all educational programs at Tulane and throughout the United States.

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[24] Even under rational basis scrutiny, the Fifth Circuit's decision—and Louisiana Section 3(B) as reinterpreted—should not survive constitutional scrutiny. *See, e.g., Raffaelli v. Comm. of Bar Exam'rs*, 496 P.2d 1264, 1275 (Cal. 1972) (holding that statute requiring U.S. citizenship for bar admission violated the Equal Protection Clause because "[t]he classification within the statutory scheme operates irrationally without reference to any legitimate state interest except that of favoring United States citizens over citizens of other countries."); *Application of Park*, 484 P.2d 690, 691-692 (Alaska 1971) (In assessing whether a citizenship requirement for bar admission was constitutional, the court analyzed whether there was a rational connection between one's fitness to practice law and citizenship; the court held there was no rational connection.).

II. THE DECISION BELOW HAS NEGATIVELY IMPACTED TULANE'S ADMISSIONS PROCESS.

Louisiana denies nonimmigrant aliens the opportunity to practice law within its borders. As a result, Tulane's international allure has been tarnished, affecting Tulane's ability to attract top talent, both internationally and within the United States. Following *In re Bourke*, Tulane has experienced a nine-percent decrease in international J.D. applicants and a forty-percent decrease in international LL.M. applicants. Tulane concedes that the events surrounding September 11, 2001 have likely contributed to the decline in foreign applicants. Given the events' negative impact on international recruiting, however, the recent decision further impedes Tulane's efforts to recruit international students.

Tulane's ability to attract foreign students directly correlates to Tulane's ability to attract top U.S. candidates. Almost half of Tulane's incoming class said that a main reason they selected Tulane was for its international law programs. Studies have shown that "[t]hese programs internationalize the student bodies of law schools which schools use as evidence of their international and even global characters . . . . [T]he significance of the international label addresses a law school's ability to attract applicants for its JD program as well." Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers* 15-16 (Working Paper 942) (2005), *available at* http://law.bepress.com/expresso/eps/942 (last visited Aug. 1, 2006).

Correspondingly, Tulane's ability to place foreign lawyers in employment, including employment in Louisiana, is causally related to the caliber of students that it attracts, whose characteristics, in turn, impact their success in finding employment. Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 Fordham Int'l L.J. 1039, 1057 (2002). "The more well-known a law school is among foreign lawyers, the more likely it can be selective

among applicants with regard to [student characteristics that impact their employment success]." *Id.* Accordingly, Tulane's ability to attract well-qualified foreign students helps it further promote its international programs. The decision has an undisputable negative impact on Tulane's ability to recruit top students.[25] A ruling with such negative potential impact on the education and practice of law in the United States requires this Court to grant certiorari.

III. THE DECISION BELOW IMPACTS THE QUALITY OF EDUCATION PROVIDED TO TULANE LAW STUDENTS.

As part of its treasured history and educational mission, Tulane and its students have always valued the benefits that result from the presence of international students inside and outside classroom. Research has verified the importance and benefits of all forms of diversity in the student body, including the benefits of multicultural and multiracial perspectives that foreign students bring to the classroom. *See, e.g.*, Patricia Gurin, et al., *Diversity and Higher Education: Theory and Impact on Educational Outcomes*, 72(3) Harv. Educ. Rev. 330 (2002); *see also* Morgan Appel, et al., Association of American Colleges and Universities, *The Impact of Diversity on Students: A Preliminary View of the Research Literature* (1996). The decision below impedes the

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[25] "In the competition among U.S. law schools for transnational graduate students, it appears that location as it relates to bar admission rules matters. Schools located in New York are disproportionately successful in placing their graduates in jobs in New York." Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers* 30 (Working Paper 942) (2005) (discussing the requirements for international students who want to sit for the New York bar) *citing* Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 Fordham Int'l L.J. 1039 (2002).

ability to create and maintain such a diverse setting, disregarding this Court's prior statements and greatly impeding Tulane's ability to carry forward its mission.

International students in both the J.D. and LL.M. programs enroll in all classes at Tulane.[26] Tulane encourages this diversity in the classroom because international students bring a comparative perspective to share with other students. The benefits of student body diversity have recently been noted by this Court: "[t]hese benefits are 'important and laudable,' because 'classroom discussion is livelier, more spirited, and simply more enlightening and interesting' when the students have 'the greatest possible variety of backgrounds.'" *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (footnotes and citations omitted). Although the Court in *Grutter* addressed racial diversity issues, the Court still noted the importance of educating law students to do business in a global economy. "These benefits are not theoretical, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints." *Id.* The *Grutter* analysis is applicable to this case because, "[c]lassifications based on alienage, *like those based on nationality or race*, are inherently suspect and subject to close judicial scrutiny." *Graham v. Richardson*, 403 U.S. 365, 372 (1971) (emphasis added). One of the best ways to train law students to practice law in a global marketplace is to have an internationally diverse student body, as Tulane has always endorsed.

Tulane's international students contribute significantly to the educational environment in numerous other ways. The international students often serve as special editors on Tulane's journals, assisting in the production of the many

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[26] Any limitations to enrollment are related to LL.M. and J.D. status rather than to international status.

articles published in these journals by foreign scholars.[27] The international students also teach popular courses on legal language to the J.D. students. In these legal language courses, the international students teach the vocabulary necessary for communicating in legal environments of foreign countries. The J.D. students are so motivated to learn from their fellow international students that they take these classes on a not-for-credit basis. U.S. students value the opportunity to learn from their international counterparts who have first-hand knowledge of the legal language being taught. They do so knowing that these courses provide valuable tools for their legal careers. Indeed, today many Tulane alumni use these skills as they live and practice abroad as members of the bars in a number of foreign countries.

Given the significant impact on the educational environment, combined with this Court's recent acknowledgment of the importance of providing a diverse educational setting to prepare lawyers to work in a globalizing world, this Court should grant certiorari to address the Fifth Circuit's decision, which causes a severe negative impact on the educational opportunities available to students, and disregards this Court's statements regarding the importance of a diverse setting for legal education.

IV. THE DECISION BELOW WILL DIRECTLY IMPACT THE QUALITY OF THE LOUISIANA STATE BAR AND THE LEGAL SERVICES THE BAR PROVIDES.

Fostering diversity is not merely for the purpose of conducting a classroom exercise. Tulane promotes student diversity in hopes that the benefits of exposure to varied perspectives will follow into legal practice. Tulane has made this a reality, and now has alumni practicing law in all regions

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[27] *See, e.g.*, Centennial World Congress on Comparative Law Papers, 75 Tul. L. Rev. 859-1245 (2001).

of the world. This Court has recognized the continuity between legal study and legal practice. *See, e.g.*, *Grutter*, 539 U.S. at 332-33 ("Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity."). Likewise, a primary aim of the Louisiana State Bar is to "encourage collegiality among its members."[28] The recent ruling prevents Louisiana practitioners from achieving that mission by denying nonimmigrant aliens living in Louisiana the opportunity to practice law, in contradiction to Congressional authorization.[29]

The variety and quality of Tulane's U.S. applicants could also be impaired as the number of qualified foreign students applying to Tulane declines. The negative impact of the recent ruling on Tulane's international program may discourage U.S. applicants from attending Tulane. As Tulane contributes significantly to the education of the members of the Louisiana Bar, any negative impact on admissions at Tulane is likely to impact the Louisiana Bar.

As this Court recognized over a quarter of a century ago, "[t]he 'increased specialization and high mobility' of today's Bar is a consequence of the dramatic change in the demand for legal services that has occurred during the past century." *Leis v. Flynt*, 439 U.S. 438, 450 (1979) (quoting *Spanos v. Skouras Theatres Corp.*, 364 F.2d 161, 170 (2d Cir. 1966)). Today, the globalized world economy demands that some lawyers practicing in the United States have particular familiarity with both domestic and international legal issues. In fact, "[l]awyers frequently represent foreign countries and the nationals of such countries in litigation in the courts of the United States, as well as in other matters in this country."

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[28] *See* Louisiana State Bar Mission Statement, *available at* http://www.lsba.org/association/association.html (last visited July 27, 2006).

[29] *See infra* footnote 34.

In re Griffiths, 413 U.S. at 724 n.14. In these cases, it is in the client's best interest that his lawyer understands both the domestic and international implications of their representation.

A qualified nonimmigrant alien attorney's innate understanding of his native legal system and culture will often make him best suited to assist U.S. clients in negotiating foreign legal issues.[30] Similarly, nonimmigrant alien lawyers are uniquely positioned to represent foreign clients in U.S. litigation or transactions. Moreover, nonimmigrant aliens are particularly situated to provide representation for other immigrants residing in the State. These clients are likely to feel more comfortable dealing with attorneys who are from their home country, and who understand their particular culture, situation, and needs. The Fifth Circuit's approval of the reinterpretation of Section 3(B) discourages international students from seeking the legal education necessary to effectively negotiate the U.S. legal system. As a result, non-immigrant aliens' specialized knowledge will not be utilized and U.S. and international clients will not benefit from their expertise.

The State's many immigrant, indigent, or underrepresented clients will be particularly harmed by the Fifth Circuit's ruling. Nonimmigrant aliens, like petitioners in this case, often represent U.S. clients that may not otherwise receive legal aid.[31] This Court has recognized the specific need for such lawyers:

> Out-of-state lawyers may—and often do—represent persons who raise unpopular federal claims. In some cases,

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[30] Consider LA. REV. STAT. tit. 37, ch. 4 app., art. 14, § 11, which provides for licensing of legal consultants in foreign law.

[31] *See* Joe Gyan, Jr., *Court Hears Challenge to Lawyers Ban*, Baton Rouge Advocate (October 6, 2004); Susan Finch, *Judge Deals Setback to Foreign Lawyers: Ban from Louisiana Bar Exam is Upheld*, New Orleans Times Picayune (July 3, 2003).

> representation by nonresident counsel may be the only means available for the vindication of federal rights. *See Leis v. Flynt,* 439 U.S., at 450 . . . (STEVENS, J., dissenting). The lawyer who champions unpopular causes surely is . . . important to the 'maintenance or well-being of the Union,' *Baldwin,* 436 U.S., at 388 . . .

Sup. Ct. of New Hampshire v. Piper, 470 U.S. 274, 281 (1985). As exemplified by the present nonimmigrant alien petitioners, "[t]he interest these lawyers seek to vindicate is not merely the pecuniary goal that motivates every individual's attempt to pursue his calling," rather, "[i]t is the profession's interest in discharging its responsibility for the fair administration of justice in our adversary system." *Leis,* 439 U.S. at 452-53 (STEVENS, J., dissenting). The benevolent work by nonimmigrant aliens, like the petitioners, is frustrated by the Fifth Circuit's ruling in this case, and the Louisiana residents most in need will be negatively impacted, particularly in a time of great need for legal aid and assistance in the state of Louisiana.

V. THE DECISION BELOW WILL ADVERSELY AFFECT THE ECONOMY.

The Fifth Circuit's affirmation of the reinterpretation of Section 3(B) violates the Supremacy Clause because it directly contradicts federal law.[32] The result is a significant negative impact on the economy. As the Economic Report of the President recognizes, "high-skilled immigrant workers are a significant part of the skilled U.S. workforce. . . . Promoting a flexible and skilled labor force . . . through policies that attract the world's best and brightest to our shores . . . will ensure that the United States remains a competitive leader in

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[32] *See* Petition for Writ of Certiorari, *Wallace v. Calogero* (filed in the Supreme Court June 23, 2006) (No. 05-1645) at 11 (arguing that "Congress has established a comprehensive statutory scheme to govern the treatment of aliens and immigrants in the United States").

this rapidly changing world economy." 2006 Economic Report of the President at 57, 63-64. The Louisiana Bar's focus on the alleged transience of nonimmigrant aliens ignores the economic benefits of foreign workers, particularly given that there is no indication that nonimmigrant aliens disproportionately blight the legal community through lawyer nonfeasance or malfeasance.[33] Thus, the ruling below inhibits the promotion of a flexible and skilled workforce by preventing highly-skilled foreign workers from contributing to the legal community as members of the Louisiana Bar.

In addition to denying nonimmigrant alien lawyers the opportunity to seek state licensure,[34] the ruling also dis-

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[33] Furthermore, the reasoning of the Louisiana Supreme Court ignores the transient nature of other classes of citizens and immigrant attorneys that practice in Louisiana. For example, the Louisiana Supreme Court failed to articulate why nonimmigrant aliens are more susceptible to being "international transients" compared to U.S. citizens with dual citizenship living in their foreign country of citizenship, or even permanent resident aliens who maintain the citizenship of their home country. "A lawyer must remain accessible to his clients and subject to the control of the bar. . . . To begin with, however, the possibility that an alien lawyer might voluntarily return to his native land is not significantly different, in today's highly mobile society, from the possibility that a citizen lawyer might voluntarily move to a different jurisdiction in the United States, e.g., in search of better employment opportunities." *Raffaelli*, 496 P.2d at 1271-1272.

[34] An H-1B visa holder is admitted to the United States for the purpose of engaging in a specialty occupation, which includes law. 8 U.S.C. §1101(a)(15)(H)(i)(b). An alien is required to obtain "full state licensure to practice the occupation, if such licensure is required to practice in the occupation," and must have that license prior to approval of the H-1B visa. 8 U.S.C. §1184(i)(2)(A); 8 C.F.R. §214.2(h)(4)(v). The rationale that a nonpermanent resident alien is merely temporarily in the state ignores the Immigration and Nationality Act provision for adjustment of status which allows a non-immigrant alien to adjust their status to permanent resident. *See* 8 U.S.C. § 1255(a). For further discussion of violation of the Supremacy Clause, *see* Petition for Writ of Certiorari,

courages employer sponsorship of nonimmigrant aliens for legal, permanent residency. Between 2000 and 2004, about fifteen-percent of new permanent residents received green cards through employment-based immigration. 2006 Economic Report of the President at 60. In 1990, Congress enacted a priority system with employment-based categories for granting aliens permanent residence. One employment-based category makes available 40,000 visas per year to advanced degree professionals who are either sponsored by their employer, or who are of exceptional ability.[35]

State bar membership is a prerequisite to practicing law. By excluding nonimmigrant aliens from bar membership, the 2002 reinterpretation of Section 3(B) precludes such aliens from obtaining a nonimmigrant work visa to practice law even though federal law explicitly authorizes such visas for lawyers. If this interpretation is extended to other professional occupations, Louisiana would effectively eliminate federal nonimmigrant work visas from issuing for otherwise qualified nonimmigrant aliens residing and seeking to work in specialized professions in Louisiana.

Wallace v. Calogero (filed in the Supreme Court June 23, 2006)(No. 05-1645) at 11-15.

[35] *See* U.S. Citizenship and Immigration Services, Employment-based Permanent Residence, Employer Information Bulletin 14, March 16, 2005. Qualifying as an alien of exceptional ability must be demonstrated by a minimum of three of the following types of documentation: (1) Official academic record demonstrating that alien has earned degree(s); (2) Statement(s) from employer(s) demonstrating at least ten years of full-time experience in the field; (3) License or certification for professional practice; (4) Salary or other remuneration for services commensurate with that of a professional; (5) Membership in professional association(s); and (6) Recognition by peers or government/professional entities for achievements and contributions. *Id.* The reinterpretation of Section 3(B) sets up a conundrum not intended by Congress. Without a permanent resident visa, nonimmigrant aliens cannot qualify for bar licensure. At the same time, they will have difficulty qualifying for the visa without a bar license.

"The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the state would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work." *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 416 (1948). This prohibition on advancement in the profession in turn will lead to lower employment and fewer employers willing to sponsor a nonimmigrant resident alien for employment based immigration. This cannot be the result that the Constitution permits, particularly in light of this Court's precedent regarding immigrants and the right to work. *See id.* at 419 (finding that statute denying lawful alien inhabitants the right to engage in an occupation violated the Equal Protection Clause and Supremacy Clause); *see also Truax*, 239 U.S. at 41-42 (holding statute that discriminated against resident invalid as denying equal protection and violating the Supremacy Clause under the law because lawful residents should not be denied "entrance and abode").

CONCLUSION

For all of the above-stated reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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